

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

FRANCISCO ABELLAN VILLENA, et al.

Defendants.

No. 18-cv-4309 (PKC)

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
STATUS REPORT**

Plaintiff Securities and Exchange Commission ("SEC") respectfully submits this Status Report in compliance with this Court's Order dated September 27, 2021 (ECF No. 93).

1. Background and Status

The SEC's Complaint in this case alleges that defendants violated the anti-fraud and securities registration provisions of the federal securities laws by engaging in a fraudulent scheme to manipulate the market for shares of a microcap company named Biozoom, Inc. that advertised a medical diagnostic device. The scheme generated roughly \$34 million in illicit proceeds from sales of Biozoom shares to retail investors and others at artificially inflated prices in May and June of 2013. Defendant Francisco Abellan Villena ("Abellan") orchestrated the scheme and conducted most of the actual trading. Defendants Guillermo Ciupiak ("Ciupiak"), James B. Panther ("Panther") and Faiyez Dean ("Dean") each knowingly or recklessly played essential roles in the scheme's operation. Abellan, Dean and Panther are also defendants in a parallel criminal case pending in the District of Arizona, *U.S. v. Abellan, et al.*, No. CR-19-00448 (D.Az).

This Court has entered default judgments against Abellan and Dean. (ECF Nos. 71 and

92). The SEC's charges against Panther have not been resolved due to the pendency of the parallel criminal case. Discovery as to Panther in this civil case has been stayed at the request of the Department of Justice since May 2019 (ECF No. 58). Panther pleaded guilty in the criminal case in May 2020.¹ The SEC's charges against Ciupiak have been partially resolved by virtue of a consent judgment as to liability (ECF No. 45), entered pursuant to his bifurcated settlement with the SEC.² Until recently, the SEC anticipated that its charges against Panther, and all remaining issues as to Ciupiak, would be either settled or resolved on dispositive motion once Panther had been formally sentenced in the criminal case. Panther's sentencing hearing in the criminal case has been repeatedly continued, however, and it now appears that further indefinite delay is possible. The SEC understands that the Justice Department intends to submit its own Status Report to this Court.

While the SEC defers to the Justice Department as to the status of the criminal case, our understanding is that Panther's sentencing is currently scheduled for December 21, 2021, but that the Justice Department may seek a continuance on account of developments pertaining to its efforts to have Abellan extradited from Spain back to the U.S. We understand that Abellan has been ordered to be extradited and has exhausted all appeal rights, but that he was released from confinement during the pendency of one of his appeals and that his current whereabouts are now unknown.

¹ A copy of Panther's signed Plea Agreement is reproduced as Exhibit 1 hereto. The Agreement is not sealed and is publicly available on PACER.

² The Docket Sheet currently indicates that this case was "terminated" as to Ciupiak upon entry of the Consent Judgment against him on February 13, 2019. However, in accordance with Ciupiak's bifurcated settlement with the Commission, the Consent Judgment provides that "[t]he Court shall determine the amounts of disgorgement and civil penalty upon motion of the Commission." ECF 45, at ¶ V.

2. The Steps Necessary to Bring this Case to Conclusion

In view of the developments in the parallel criminal case, the SEC believes that the interests of justice and judicial economy would be served by attempting to reach fully dispositive settlements with Panther and Ciupiak. Both of those defendants are represented by experienced counsel. The SEC believes that the assistance of a Magistrate Judge or mediator is not necessary at this time. However, the SEC may request such assistance should it appear to be necessary in the future. The SEC proposes to report to the Court no later than January 18, 2022 regarding the parties' progress in reaching mutually acceptable settlement agreements. In the meantime, the SEC is not requesting that the Court lift the stay of discovery as to Panther.

Subject to possible further developments in the parallel criminal case, the SEC anticipates that it will be possible to reach a settlement with Ciupiak as to all remaining issues. In the event that the SEC ultimately is not able to report significant progress towards settlement with Panther, we would propose a schedule for briefing a motion for summary judgment based primarily on the admissions contained in his guilty plea. We would assess whether any discovery as to Panther would be necessary.

We thank the Court for the opportunity to submit this Status Report.

Dated: October 12, 2021

Respectfully submitted,

/s/ Duane K. Thompson

Daniel J. Maher

Duane K Thompson

U.S. Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

202-551-4737

202-772-9244 (facsimile)

MaherD@sec.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Plaintiff's Status Report were served via email and ECF this 12th day of October 2021 on the following:

David L Axelrod, Esq.
Ballard Spahr
1735 Market Street, 51st Floor
Philadelphia, PA 19103
Phone: 215-864-8639
Fax: 215-665-8999
Email: axelrodd@ballardspahr.com
Counsel to Defendant, James B. Panther

D. Brittain Shaw, Esq.
Trial Attorney
Unites States Department of Justice
Criminal Division, Fraud Section
950 Constitution Avenue, NW
Washington, DC 20530
Phone: 202-616-2162
Email: brittain.shaw@usdoj.gov
Counsel to Intervenor, Department of Justice

Michael R. McPhail, Esq.
Faegre Baker Daniels LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203
Phone: 303-607-3692
Fax: 303-607-3600
Email: MichaelMacphail@FaegreBD.com
Counsel to Defendant, Guillermo Ciupiak

/s/ Duane K. Thompson